

In the Matter of Merchant Mariner's Document No. Z-506277-D1 and
all other Seaman Documents

Issued to: Manuel N. R. Vargas

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1416

Manuel N. R. Vargas

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 27 March 1963, an Examiner of the United States Coast Guard at Boston, Massachusetts suspended Appellant's seaman documents for fifteen months upon finding him guilty of misconduct. The allegations in three of the four specifications were proved by evidence that while serving as an ordinary seaman on board the United States SS EXCELSIOR under authority of the document above described, on 9 February 1963, Appellant disobeyed a lawful command of the Master; he had a dangerous weapon, a sheath knife, in his possession without permission; and Appellant assaulted and battered another member of the crew with the knife.

A fourth specification which was found proved alleges that Appellant wrongfully failed to answer a subpoena issued and served by the Investigating Officer in the case.

OPINION

The evidence shows that Appellant returned on board intoxicated and refused to obey the Master's order to go to his room and stay there. Consequently, Appellant was handcuffed to his bunk. When one of his roommates entered the room, Appellant used his sheath knife to cut this seaman on the arm. Nine Stitches were required to assist in healing the wound.

This appeal is taken on the ground that there is "insufficient evidence to substantiate the findings of the Hearing Examiner." No reasons for this contention have been submitted by counsel.

Review of the Examiner's decision on appeal should be limited to specific exceptions and clear errors on the record. Title 46 CFR 137.30-1(f); Commandant's Appeal Decision No. 1208; Attorney General's Manual on the Administrative Procedure Act (1947), p. 84, note 5. In view of the blanket nature of this appeal, it is

sufficient to state that the Examiner's findings are supported by substantial evidence except with respect to the alleged wrongful failure to answer a subpoena.

The record indicates that the purpose of the subpoena was to require Appellant to appear at the Coast Guard Investigating Section in Boston in order to facilitate the service of the form containing the other three specifications and the summons to appear at a hearing. This is not a legitimate function of a Coast Guard Investigating Officer's subpoena power. That the purpose of the subpoena was not to conduct further investigation is apparent from the fact that the date on the completed specification and summons form precedes the date on which the subpoena ordered Appellant to appear. Therefore, the finding that this specification was proved is set aside and the specification is dismissed.

The remaining offenses and Appellant's prior record, which includes a suspension in 1956 for assault with a dangerous weapon, are more than enough to justify the fifteen months' suspension.

ORDER

The order of the Examiner dated at Boston, Massachusetts, on 27 March 1963, is AFFIRMED.

E.J. Roland
Admiral, United States Coast Guard
Commandant

Signed at Washington, D.C., this 19th day of September 1963.